

August 20, 2012

Marlene H. Dortch Secretary Federal Communications Commission 445 12th St SW Washington, DC 20554

Re: WT Docket No. 12-4

Dear Ms. Dortch:

On August 16, 2012, I spoke with Zach Katz, Chief of Staff to Chairman Genachowski, with regard to the above captioned matter.

I stressed PK's concern that unless the Commission's order directly addresses the question of insulation with regard to programming insulation, the Order has the potential to create a new loophole in the attribution rules that will undermine the critical function of the attribution rules in maintaining viewpoint diversity in traditional media. This is true not merely for cable, but for broadcasting as well.

For example, assume that News Corp and Belo wished to coordinate their coverage of national events to advance their legislative agenda and/or financial interests. The attribution rules generally prevent these companies from entering into business partnership so as to prevent this outcome by attributing the media outlets to the companies to each other if they are able to exercise influence over each other's programing. But under the precedent established here, News Corp and Belo could establish a Joint Operating Entity to develop "new, more spectrum efficient technologies for delivery of news and entertainment." As part of this News Corp/Belo JOE, the companies could disclose to each other information on their news covering techniques, content, and issues they intend to cover without triggering the attribution rules. This would provide an easy way for media companies to circumvent the attribution rules and compromise the independence the ownership rules generally and the attribution rules specifically are designed to address.

The Commission should therefore clarify that the paragraphs of the DOJ proposed Final Judgment that prohibit exchange of information with regard to programming other than what is necessary to develop the technology of the JOE, Paragraphs I & J of the Prohibited Conduct (Section V), effectively overlap the certification requirements under Rule 76.501 note 2. The Commission should also require that the cable operators may not share programming information with each other in a way that would violate the insulation criteria. For example, Time Warner Cable and Comcast would not be permitted to share information on program pricing and tier placement of video programming, other than what is necessary to develop the technologies that form the primary purpose of the JOE. Even then, such information must not be used in an anticompetitive manner.



By making this clarification, the Commission will not only protect competition in the programming market and preserve viewpoint diversity in the manner directed by Congress in Section 613(f). Such a clarification will protect the attribution rules from erosion and preserve diversity of views in broadcast media as well. By contrast, failure to emphasize the Commission's long standing policy that competing media outlets cannot coordinate through joint ventures will open the door to a proliferation of "Joint Operating Entities" to circumvent the attribution rules and compromise viewpoint diversity.

In accordance with Section 1.1206(b), this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s Harold Feld Senior Vice President Public Knowledge 1818 N St NW, Suite 410 Washington, DC 20036

cc: Zach Katz